

Decision 01-07-031 July 12, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking into  
Implementation of Public Utilities Code  
Section 390.

Rulemaking 99-11-022  
(Filed November 18, 1999)

**ORDER CLARIFYING DECISION 01-06-015**

**Summary**

In this decision the Commission clarifies its intent regarding the conclusions reached in Decision (D.) 01-06-015 of the reasonableness of various amendments proposed by Southern California Edison Company (SCE) to its contracts with qualifying facilities (QFs). In that decision, the Commission pre-approved three voluntary QF contract amendments for Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E) that address the special circumstances presented by the dysfunctional wholesale market in California. We also found reasonable proposed amendments presented by SCE and by the California Cogeneration Council (CCC).

In today's decision, we acknowledge several recent filings by SCE and CCC submitting various agreements and amendments for approval and we reiterate and clarify that in finding such amendments and agreements reasonable, the Commission believes that the terms and conditions contained in

those amendments and agreements taken together are reasonable. This includes but is not limited to the provisions calling for both SCE and QFs to suspend or withdraw pending litigation. The specific findings regarding reasonableness requested by SCE are approved with respect to each of the amendments and agreements submitted for approval. SCE will be allowed to recover the costs it incurs under these agreements and amendments, subject to continued Commission review regarding the utility's future administration of those contracts.

### **Need for Expedited Consideration**

Rule 77.7(f)(9) of the Commission's Rules of Practice and Procedure provides in relevant part that:

"...the Commission may reduce or waive the period for public comment under this rule...for a decision where the Commission determines, on the motion of the party or on its own motion, that public necessity requires reduction or waiver of the 30-day period for public review and comment. For purposes of this subsection, "public necessity" refers to circumstances in which the public interest in the Commission adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment. "Public necessity" includes, without limitation, circumstances where failure to adopt a decision before expiration of the 30-day review and comment period...would cause significant harm to public health or welfare. When acting pursuant to this subsection, the Commission will provide such reduced period for public review and comment as is consistent with the public necessity requiring reduction or waiver."

We balance the public interest in quickly resolving QF pricing and payment issues against the public interest in having a full 30-day comment cycle on the proposed amendment. We conclude that the former outweighs the latter.

We must respond quickly to provide additional assurance that as much QF generation is available as possible this summer.

### **Comments**

On July 9, 2001 the revised draft decision of Commissioner Lynch on this matter was mailed to parties for comment. Comments were received on July 11, 2001 from SCE, CCC and Luz Solar Partners LTD., VIII and IX (Luz). SCE and Luz address the proposal made by SCE regarding excess generation sales. However, the Commission did not approve that proposed contract amendment in D. 01-06-015, and this decision does not address that proposal. The Commission will address that proposal in a subsequent decision, and we invite both Luz and SCE to resubmit their comments at an appropriate time.

CCC is supportive of the revised draft decision, but seeks an extension on the deadline imposed for execution of amendments in D. 01-06-015 from July 15, 2001 to July 31, 2001. CCC asserts that negotiations between QFs and PG&E are more likely to succeed if an extension is granted.

The Commission notes that D. 01-06-015 does not preclude amendments being executed after July 15, 2001. QFs and utilities may continue to negotiate and execute contract amendments at any time. However, the blanket pre-approval of the specific contract amendments discussed in D. 01-06-015 is limited to amendments executed no later than July 15. So, the utility may be at risk in subsequent reasonableness reviews for execution of amendments made after July 15. We are not persuaded that an extension of the deadline is required at this time.

However, in an effort to ensure that as much QF generation is available as possible this summer, we will grant an extension to the preapproval of amendments discussed in D. 01-06-015. This extension is limited to amendments between QFs and PG&E, and solely for those amendments directed at gas-fueled

QFs: Supplemental payments if current SRAC postings are insufficient for recovery of the QF's operating costs and excess generation payments.

## **Discussion**

On June 1, 2001, Commissioner Lynch issued a Draft Decision providing guidance concerning three types of contract amendments that the Commission would deem reasonable. The Draft Decision also indicates that the utilities should submit a report to the commission concerning contract amendments made or rejected by July 31, 2001.

On June 13, 2001, SCE filed a Motion Submitting For Commission Approval (1) Executed Long-Term Amendments With Certain Gas-Fired Cogenerators; (2) Executed Short-Term "Bridge" Amendments With Certain Gas-Fired Cogenerators; (3) Standardized Form Amendment Providing For Five-Year Alternative "Fixed" SRAC Price Of 5.37 (the "June 13 Motion")<sup>1</sup> In the June 13 Motion, SCE sought reasonableness approval of certain long-term and short term amendments to power purchase agreements between SCE and gas-fired QFs.<sup>2</sup>

On June 26, 2001, SCE filed a Motion For Commission Approval Of Additional QF Contract Amendments And Revised "Excess Energy" Amendments, And For Additional Commission Findings Re Previously Submitted Form and Executed QF Agreements (the "June 26 Motion"). The

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<sup>1</sup> SCE served the June 13 motion as "Supplemental Comments" concerning the Draft Decision, electronically on the service lists for both R.99-11-022 and I.01-04-027 on June 12, 2001. The Commission's Docket Office has since advised SCE that the filing should be recaptioned as a motion and that it should be filed only in the R.99-11-022 docket.

<sup>2</sup> These executed amendments are substantially the same as the generic long-term amendment submitted by the California Cogeneration Council (CCC) with its Comments on the June 1, 2001 Draft Decision.

June 26 Motion indicated that SCE had executed numerous “generic” fixed rate agreements with renewable QFs and also tendered sixteen non-standard renewable agreements for review.

One June 28, 2001, SCE filed a Motion for Approval of Additional Gas Amendments And Bridge Amendments With Berry Petroleum And Of Extension Of Bridge Amendments With Certain Gas-Fired Cogenerators (the “June 28 Motion”).

The long-term and short-term amendments to power purchase agreements between SCE and gas-fired cogenerators (the “Gas Amendments”) submitted for approval by SCE with its June 13, 26 and 28 Motions are reasonable. This decision is not intended to modify the prior determination of reasonableness made in D.01-06-015, but to clarify for parties the Commission’s intent. Thus, the 30-day statutory appeal period for D.01-06-016 runs from the date of issuance of that decision and is not affected by the issuance of this clarifying order.

### **Findings of Fact**

1. The Commission has a long-standing policy of supporting beneficial non-standard contract provisions.
2. CCC and SCE presented proposed contract amendments and agreements that the Commission found reasonable in D. 01-06-015.
3. SCE has subsequently submitted for approval additional agreements and amendments based substantially on those approved by the Commission in D.01-06-015.
4. By finding those proposed amendments reasonable, the Commission finds that all the terms and conditions contained therein taken together are reasonable, including the suspension or elimination of pending litigation.

5. SCE's entry into the Gas Amendments and into agreements based substantially on the Fixed Energy Rate Agreement with specific QFs is reasonable and prudent.

6. All terms and conditions of the executed Gas Amendments and the Fixed Energy Rate Agreement submitted with SCE's Motions of June 13, 26 and 28, as to which Commission approval is required, as defined in such agreements, are reasonable and prudent for all purposes, including recovery through rates of any payments made pursuant to such terms, subject only to review for reasonableness of SCE's administration of the submitted agreements.

7. The releases contained in the Gas Amendments and the Fixed Energy Rate Agreement are reasonable and prudent for all purposes, and SCE shall not be subject to further reasonableness review with respect to the administration of power purchase agreements insofar as claims with respect to such agreements are released in accordance with the terms of the Gas Amendments and the Fixed Energy Rate Agreement.

8. The terms and conditions of the Gas Amendments and executed Fixed Energy Rate Agreement will supersede any prior decision, ruling or order of the Commission pertaining to the subject matter of such agreements, and that no further Commission order, decision or ruling will alter, amend or increase the obligations and corresponding benefits created by such terms and conditions.

9. Insofar as terms and conditions of the Gas Amendments, Fixed Energy Rate Agreement and the Bridge amendments do not expressly require Commission approval, as defined in those agreements or otherwise, such agreements are nevertheless in all respects prudent and reasonable, and any payments made pursuant to such agreements shall be fully recoverable in rates, subject only to review (unless otherwise noted above) for reasonableness of administration of such agreements.

10. Extending the deadline for execution of contract amendments between PG&E and its QFs may result in more successful negotiations and further the Commission's goal of assuring full production from QFs this summer.

### **Conclusion of Law**

1. SCE should be authorized to recover all costs associated with payments made under the Gas Amendments and the Fixed Rate Agreements submitted by SCE with its June 13, 26 and 28 motions, subject only to Commission review of the reasonableness of future administration of the amendments.

2. The July 15, 2001 deadline for the execution of contract amendments specified in D.01-06-015 should be extended to July 31, 2001 for amendments executed by PG&E and its QFs, limited to those amendments relating to supplemental payments and excess generation payments.

### **O R D E R**

Therefore, **IT IS ORDERED** that:

1. SCE's June 13 Motion, June 26 Motion and June 28 Motion are granted.
2. The Gas Amendments and Fixed Rate Agreements submitted for approval by the Commission with SCE's June 13 Motion, its June 26 Motion and its June 28 motion are approved, in their entirety, as reasonable.

3. SCE shall be authorized to recover all payments made under the Gas Amendments and the Fixed Rate Agreements subject to Commission review of the reasonableness of future administration of the amendments.

4. The deadline specified in D.01-06-015 is extended as discussed herein.

This order is effective today.

Dated July 12, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners